

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

FRIED ALLIGATOR FILMS, LLC
AND JERRY TANKERSLEY

PLAINTIFFS

VS.

CIVIL ACTION NO. 4:16cv175-DMB-JMV

NEW YORK LIFE INSURANCE COMPANY,
MICHAEL WILLIS AND JOHN DOES 1-10

DEFENDANTS

Notice of Removal

TO: Elmus W. Stockstill
Leflore County Circuit Court Clerk
Post Office Box 1953
Greenwood, Mississippi 38935-1953

C. Maison Heidelberg
Watson Heidelberg Jones, PLLC
Post Office Box 23546
Jackson, Mississippi 39225-3546

You are hereby given notice that the defendants New York Life Insurance Company ("New York Life") and Michael Wayne Willis ("Willis") have removed this action from the Circuit Court of Leflore County, Mississippi, to the United States District Court for the Northern District of Mississippi, Greenville Division. The bases for removal are set forth below:

1.

This Notice of Removal is filed pursuant to 28 U.S.C. §§ 1441, 1446, and 1332.

2.

New York Life was served in this case on or after July 21, 2016. Willis received a copy of the complaint and other papers in this case on or after August 5, 2016. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446, in that it is filed within thirty days of first receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claims for relief upon which the state court proceeding is based.

3.

A copy of all process, pleadings, and orders served upon New York Life in Civil Action No. 2016-0054-CICI in the Circuit Court of Leflore County, Mississippi, is attached as part of this Notice of Removal as Exhibit "A." A copy of all process, pleadings, and orders served upon Willis in Civil Action No. 2016-0054-CICI in the Circuit Court of Leflore County, Mississippi, is attached as part of this Notice of Removal as Exhibit "B."

4.

The United States District Court for the Northern District of Mississippi, Greenville Division, has original subject matter jurisdiction of this civil action pursuant to diversity of citizenship. The state court in which the action is pending is located in this district and division.

5.

The amount in controversy requirement for diversity jurisdiction is satisfied. The complaint demands "return of all premiums" paid for an insurance policy issued by New York Life. Those premiums in fact were more than \$100,000.00. The complaint also demands damages for loss of earnings by both plaintiffs, "loss of project(s) in the 2014 timeframe which

reasonably would have returned 7 or 8 figures” to plaintiffs, business losses, punitive damages, mental and emotional distress, attorney fees and “additional damages” Accordingly, it is beyond dispute that the amount in controversy exceeds the jurisdictional limit of \$75,000, exclusive of interest and costs.

6.

“Complete diversity of citizenship” exists in this case. Both plaintiffs are citizens of different states from both defendants.

A. According to the complaint, plaintiff Fried Alligator Films, LLC is a limited liability company formed pursuant to the laws of Mississippi, with its principal place of business in Mississippi. Fried Alligator is therefore a citizen solely of Mississippi, and is not a citizen of Alabama or New York. Fried Alligator’s citizenship is diverse from both defendants’ citizenship.

B. As stated in the complaint, plaintiff Jerry Tankersley is an individual domiciled and residing in the State of Tennessee. Tankersley is therefore a citizen solely of the State of Tennessee, and is not a citizen of Alabama or New York. Tankersley’s citizenship is diverse from both defendants’ citizenship.

C. Defendant New York Life is a citizen solely of the State of New York, being organized pursuant to the laws of that state and having its principal place of business therein.

D. The complaint incorrectly alleges that defendant Michael Wayne Willis is an individual domiciled and residing in the State of Tennessee. In fact, Willis is an individual domiciled and residing in the State of Alabama. Willis is therefore a citizen solely of the State of Alabama.

E. The John Doe defendants are disregarded pursuant to 28 U.S.C. § 1441(b).

7.

Tankersley's citizenship would, in any event, be disregarded for purposes of diversity jurisdiction. Plaintiff Tankersley is improperly joined (or "fraudulently joined" or "improperly misjoined") in this case. Tankersley has settled and released his claims against both defendants (see accepted settlement offer signed by Tankersley, Exhibit "C" hereto.) The only putative claim Tankersley did not expressly settle is the assertion "upon information and belief" (Complaint ¶ 34) that the "conversion" of a universal life policy to a whole life policy resulted in a "modified endowment contract" or "MEC." However, Tankersley already demanded that New York Life cure the MEC status of the policy, and New York Life already complied in full with that demand, before this case was filed. (See letter confirming policy is not a MEC, Exhibit "D" hereto.)

8.

Both defendants join in this notice of removal, as shown below by signature of New York Life's counsel of record (p. 5) and signature of individual defendant Michael Wayne Willis (p. 6).

9.

Pursuant to 28 U.S.C. § 1446(d), all adverse parties are being provided with this written Notice of Removal, and a copy of this Notice of Removal is being filed with the Circuit Clerk of Leflore County, Mississippi.

WHEREFORE, defendants New York Life Insurance Company and Michael Wayne Willis file this Notice of Removal and hereby remove this civil action to the United States

District Court for the Northern District of Mississippi, Greenville Division. Plaintiffs are notified to proceed no further in state court unless or until the case should be remanded by order of said United States District Court.

Respectfully submitted, this the 15TH day of August, 2016.

New York Life Insurance Company

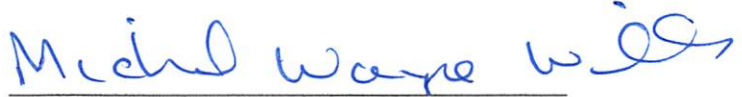
By: William F. Ray
William F. Ray

OF COUNSEL:

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Joinder of Michael Wayne Willis

I, Michael Wayne Willis, an individual citizen of the State of Alabama, hereby join in this Notice of Removal.



Michael Wayne Willis

Michael Wayne Willis
167 Linwood Road
Sterrett, Alabama 35147
Telephone: (205) 577-6538
Facsimile: None
Email: michael.willis35147@gmail.com

Certificate of Service

I, William F. Ray, attorney for the defendant New York Life Insurance Company, do hereby certify that I have this day served a true and correct copy of the above and foregoing Notice of Removal by U.S. Mail, postage prepaid upon the following:

Elmus W. Stockstill
Circuit Court Clerk
Post Office Box 1953
Greenwood, Mississippi 38935-1953

C. Maison Heidelberg
Watson Heidelberg Jones, PLLC
Post Office Box 23546
Jackson, Mississippi 39225-3546

This the 15TH day of August, 2016.



William F. Ray